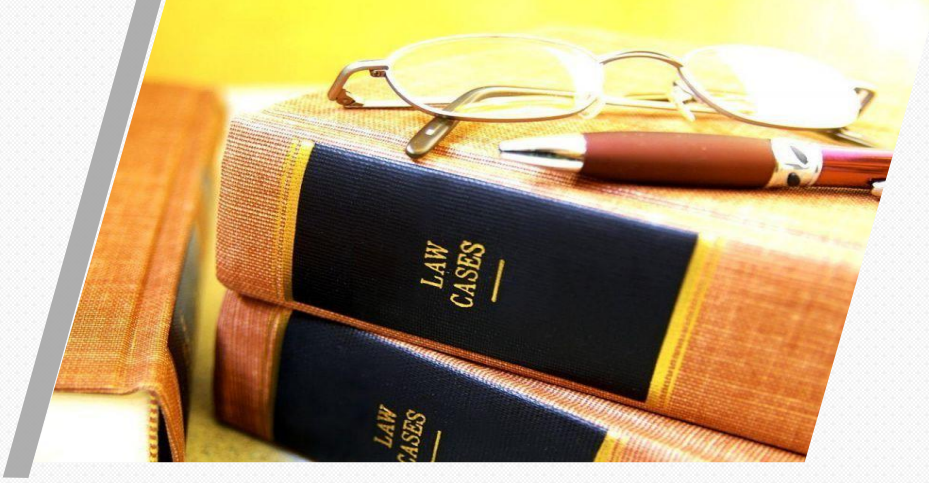
INTERNATIONAL BUSINESS ADVISORS

CONNEKT

December - 2019

Content

Direct Tax Case Laws



Case Law 1:

Where the assessee made payment of commission to non residents outside India for procuring export orders, income of non residents agents could not be considered to accrue or arise in India and therefore , there was no liability of assessee to deduct tax at source.

Assessee company is engaged in the business of manufacturing of aluminium profiles, section and trading of aluminium billets. Assessment was completed u/s 143(3) of the Act at an income of Rs. 34,63,634/- after making a disallowance u/s 40(a)(i) of the Act on the ground of non-deduction of withholding tax on payment of commission to two non-resident agents. On appeal by the assessee before the Commissioner of Income Tax(A), the CIT(A) allowed the ground of the assessee.

But department has challenged the deletion made by the CIT(A). Department contended that CIT(A) erred in deleting the disallowance of Rs.34,63,534/- on account of commission paid to non-resident commission agents. Also deptt contended that assessee had paid commission of Rs. 34,63,634/- to M/s Alpine Enterprise LLC and Shri Bipin Parmar in foreign currency for receipt of export orders. AO also mentioned that no information regarding the residential status and other particulars and transaction details with the two parties was submitted before the Assessing Officer.

Deptt also submitted that the CIT (A) had erred in deleting the disallowance by ignoring the fact that the said commission had accrued/arisen in India and, therefore, was liable for deduction of tax prior to the making of payment to the non-residents. Assessee submitted that the assessee company was not liable to deduct any tax at source on the commission in terms of provisions of section 195 of the Act as the foreign resident agents had provided services outside India and, therefore, as per section 9 of the Act, commission paid to them was not chargeable in india. It was submitted that the payments were made for procuring export orders and the payments were made to non-residents in foreign currency and, further, since the non-residents did not have any business connection or permanent establishment in India, the income of the recipients cannot be deemed to have accrued or arisen in India.

Assessee submitted that the assessee had followed the procedure laid down under section 195 and furnished the required Form 15CA and 15CB to the bank. The undisputed fact is that the assessee had paid commission to two non-residents on export orders procured by them. It is also undisputed that the non-resident agents did not have any permanent establishment or permanent place in India and the agents operated from outside India. It is also undisputed that the commission was paid for services provided to the assessee out of India which was remitted directly outside

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India and was not received by them or on their behalf by any third party. Assessee has furnished Form 15CA

Therefore, it was held that income of non-resident agents cannot be considered to accrue or arise or deemed to be received in India when the services rendered by the non-residents and the agents were outside India and the commission was also payable or paid to them outside India. It is also held that in absence of Permanent Establishment in India, there is no liability to withhold deduction of payment of commission to the foreign agents. Assessee also had duly discharged its duty in filing the required Form 15CA with respect to the foreign remittances. Therefore, the ground raised by the deptt. was dismissed.

Maan Aluminium Ltd v DCIT

Case Law 2:

Interest in property is created at very moment agreement to purchase is entered into in favour of an assessee accompanying with part payment; date of possession is not material for deciding 'period of holding' by assessee for purpose of deciding whether gain is long-term or short-term.

The assessee earned income by way of salary, long-term capital gain and other sources. The assessee had sold one residential property on 11-5-2011 for a consideration of Rs. 3.64 crore and did not offer any capital gain on the said sale. The Assessing Officer noticed that possession of the property was given to the assessee on 19-1-2011 and, thus, he concluded that the assessee had received physical possession of the property on 19-1-2011 and sold the same on 11-5-2011. According to the Assessing Officer, the property was held only for a period of four months by the assessee and, therefore, he came to the conclusion that the gain on the said sale of asset was short-term capital gain.

The Assessing Officer ignored the evidences such as agreement of purchase dated 18-12-2006 and the contention of the assessee that the property was held for more than 36 months. Ultimately, the Assessing Officer added a sum of Rs. 2.89 crore as short-term capital gain on the sale of said property. On appeal, The Commissioner (Appeals) held that for the purpose of transfer of the residential flat, agreement to purchase dated 18-12-2006 would be the date of acquisition of the property leading to LTCG and not the date of possession i.e., 19-1-2011 which had led to computation of short-term capital gain. Hence, the asset was to be treated as long-term capital asset and the gain on the sale of the flat was long-term capital gain.

It was further observed that in order to constitute rights in the capital asset, the assessee may not necessary physically possess that asset for the purpose of computing capital gain. In the instant case, the assessee had acquired the right of ownership over the flat as a result of making payment and by executing agreement to purchase dated 18-12-2006 and that right of the assessee was itself a capital asset. The tribunal held that The interest in the property was created the moment the agreement to purchase was entered into in favour of the assessee accompanying with part payment. The date of possession was not material for deciding the period of

holding by the assessee for the purpose whether the gain was long-term or short-term. Hence, AO was directed to recomputed the LTCG by allowing the indexation on the cost of acquisition taking the date of purchase as 18/12/2006.

Michelle N. Sanghvi v ACIT

Case Law 3:

Assessee has filed her return of income for assessment year 2013-14 declaring total income at Rs.6,68,290/. During the course of assessment proceedings, the AO noticed that the assessee has gifted 50% interest in her flat to her brother in law. The AO further noticed that during the year under consideration , the assessee received cash gift of Rs. 68,50,000. So, the AO asked the assessee to explain why relinquishment of right in property shall not be treated as transfer within the meaning of section 2(47), because the assessee has received cash gift of Rs. 68,50,000.

Assessee submitted that she has gifted her right in property in favour of her brother in law in accordance with family arrangement, as the family has decided to buy a separate flat for family member and accordingly she had gifted her 50% right in favour of her brother in law. The gifts were made in the family as a family arrangement to maintain peace and harmony, therefore the same cannot be said as the transfer within the meaning of section 2(47). The AO after considering the relevant submissions of the assessee and also on analysis of provisions of section 2(47), observed that the assessee's gift transaction by way of relinquishment of 50% interest in the property in favour of her brother in law as her brother in law has gifted her an amount of Rs.68,50,000/- in lieu of relinquishing her right in the property.

Therefore, the said transaction cannot be treated as family arrangements and accordingly, computed long term capital gain of Rs.6,31,019/-. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). CIT(A) after considering relevant submissions of the assessee dismissed appeal filed by the assessee. Hence CIT(A), held that the AO was right in computing in LTCG for relinquishment of 50% right in property in favour of of her brother in law.

The assessee submitted that the CIT(A) was erred in confirming the addition made by the AO, without appreciating the fact that the said transaction is gift between two relatives. The factual matrix of the case are that during the year under consideration the assessee has gifted her 50% right and interest in a family property in favour of her brother in law by way of gift deed. During the same financial year the assessee also received a cash gift of Rs.68,50,000/- from her brother in law. Based on these facts, the AO come to the conclusion that the said gifts between the assessee and her brother in law are not in nature of gifts between family members, but transfer within the meaning of section 2(47) of the Income Tax Act, 1961.

It is the contention of the assessee that she has gifted her share in the property for family settlement as per which the family has decided to buy a separate property for each member by internal arrangements, therefore, she has relinquished her 50% right in the family property in favour of her brother in law. Tribunal held that though she

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has received cash gift of Rs.68,50,000/- in pursuance of relinquishing her right in property, the said transaction is purely a family arrangement between the family members for better peace and harmony. Therefore, the AO was incorrect in treating the said transactions within the meaning of transfer as defined under section 2(47) of the Income Tax Act, 1961. Therefore, Tribunal reverse the finding of CIT(A) and direct the AO to delete the additions made.

Jyoti Rakesh Kapoor v ITO

Notifications

M/s International Centre for Research in Agroforestry, South Asia Regional Programme, NASC Complex, Delhi (ICRAF) (PAN:- AAATI4803K) has been approved by the Central Government for the purpose of clause (ii) of sub-section (I) of section 35 of the Income-tax Act, 1961.

https://www.incometaxindia.gov.in/communications/notification/notification_no_99_2019.pdf

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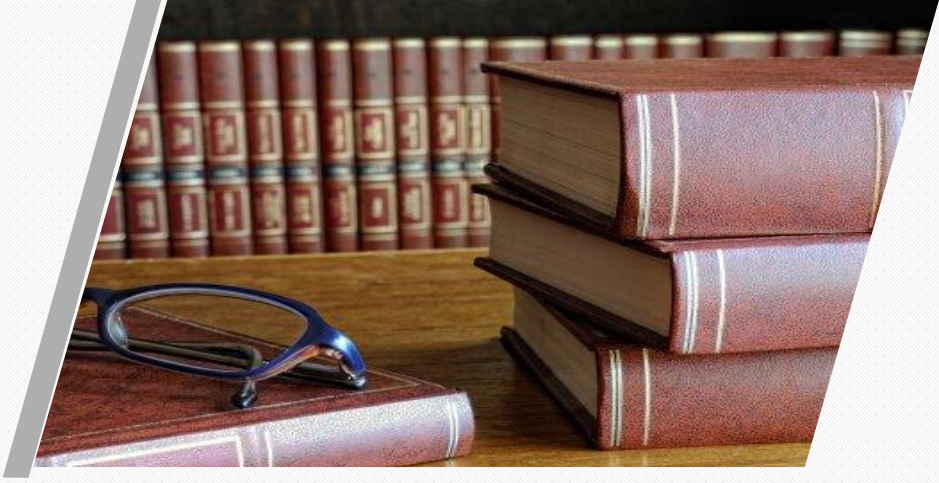

Case Law 1:

Part Recovery of Parental Health Insurance premium does not amounts to "Supply" under GST

The applicant is a leading manufacturer, supplier and exporter of paints and powder coatings. The applicant has introduced an optional parental insurance scheme for employees' parents wherein the entire amount of premium is paid by the company initially and thereafter 50% premium is recovered from salaries of the employees, the balance 50% being borne by the company. The applicant had sought an advance ruling on whether GST is payable on such recovery of 50% of premium amount. The applicant submitted that under Schedule III of the CGST Act 2017, services by an employee to employer under the course of employment are not covered under the definition of "supply" under the said Act. Further, referring to Section 7 & 2(7) of the Act, the applicant highlighted that providing parental medical insurance service is not mandatory under any law in force and that insurance service is not the business of the company. The ruling authority observed that the submissions made by the applicant are under the scope of the Act and thereby valid. Additionally, since the provision of such insurance premium service does not result in the furtherance of business of the company and referring to a similar ruling in the case of M/s POSCO IPPC vide Order No. GST-ARA-36/2018-19/B-110 Mumbai dt. 07-09-2018, it was held that the recovery of 50% premium amount from the employees does not amount to "supply of service" under Section 7 of the CGST Act and therefore no GST is liable to be paid.

AUTHORITY FOR ADVANCE RULINGS – MAHARASHTRA IN M/s JOTUN INDIA PRIVATE LIMITED (Advance Ruling No. GST-ARA-19/2019-20/B- Dated 4th October 2019)

Case Law 2:

Whether the applicant is eligible to claim GST Input tax credit (ITC) on items purchased for furtherance of Business?

The applicant is a Private Limited company registered under the Companies Act,2013. The applicant is engaged in the business of manufacturing decorative paints meant for interiors as well as exterior services. Applicant has sought an advance ruling "whether Input tax credit is available on the inward supplies of goods & services which are attributable to the incentives provided in order for expansion of business. The applicant states that due to sluggish economy & in order to face the global giants already engaged in the Paint Industry, in order to keep pace with them it becomes highly important to offer incentive scheme in order to boost sales & offers various incentives mainly in kind only. The Entity

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runs various schemes such as painter scheme, dealer incentive scheme, Gold scheme etc. & also states that they used GST input tax credit in the course or in furtherance of business and not for sale.

The applicant gives incentives to those people who assists in marketing of the products & provide such incentives without any consideration and hence not qualify as "Supply" as defined u/s 7 of the CGST Act,2017 read with Schedule 1. As per clause (h) of Sub-section (5) of Section 17 of the CGST Act, 2017 Notwithstanding anything contained in section 16(1) & 18(1) of the CGST Act, "Input tax credit is not available when the goods lost, destroyed, written off or disposed of by way of gift or free samples".

Therefore, from above provision it can be concluded that applicant is not eligible to avail ITC on inward supply of goods and services which are distributed in form of gifts under the GST Act.

AUTHORITY FOR ADVANCE RULINGS – KARNATAKA in M/s SURFA COATS (INDIA) PRIVATE LIMITED. [No. KAR ADRG 28/2019) dated 12th SEPTEMBER 2019]

Case Law 3:

Business Transfer Agreement" as a going concern on slump sale basis is exempted from levy of GST

The Applicant is the seller and is carrying on the business of manufacturing textile yarns, fabrics and garments, registered in Uttarakhand with GSTIN 05AAACI0473J1ZS. The applicant intends to sell their ongoing business to the purchasing entity, also registered in Uttarakhand, in the form of business transfer as a going concern on slump sale basis as a whole with all assets and liabilities. Subject to the terms and conditions as set out in the Business transfer agreement, the applicant agrees to sell, transfer, convey and deliver to the purchaser all rights, title and interest of the seller the business free of all encumbrances on the transfer date. From the definition of 'business' as given in the GST Act, the transfer of business above is covered under the said definition. Further, the internationally accepted guidelines issued by HRMC to treat transfer of going concern are also satisfied. Notification No. 12/2017 dated 28.06.2017 exempts the intra-state supply of services of description- "services by way of transfer of going concern, as a whole or an independent part thereof". In view of the above, the Applicant has supplied services by way of Business as a going concern and as per serial no. 2 of the Notification No. 12/2017-Central tax (Rate) dated 28.06.2017, the same is exempt from levy of GST as on date.

M/s INNOVATIVE TEXTILES LTD. V. THE AUTHORITY OF ADVANCE RULINGS FOR THE STATE OF UTTARAKHAND {Advance Ruling No. 20/2018-19 dated 26th March 2019}

Indirect Tax Notifications

1. Seeks to insert explanation regarding Bus Body Building in Notification No. 11/2017-Central Tax (Rate) dt. 28.06.2017.

CBIC vide Notification No. 26/2019- Central Tax (Rate) hereby makes amendment in the notification No.11/2017- Central Tax (Rate), dated the 28th June, 2017- the term "bus body building" shall include building of body on chassis of any vehicle falling under chapter 87 in the First Schedule to the Customs Tariff Act, 1975

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-26-2019-cgst-rate-english.pdf

2. Seeks to notify the transition plan with respect to J&K reorganization w.e.f. 31.10.2019

CBIC vide Notification No. 62/2019 – Central Tax hereby notifies those persons whose principal place of business or place of business lies in the erstwhile State of Jammu and Kashmir till the 30th day of October, 2019; and lies in the Union territory of Jammu and Kashmir or in the Union territory of Ladakh from the 31st day of October, 2019 onwards, as the class of persons who shall follow the special procedure till the 31st day of December, 2019 as mentioned in the Notification

http://www.cbic.gov.in/resources//htdocs-cbec/gst/notfctn-62-central-tax-english-2019.pdf

Indirect Tax Circulars

1. Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons- reg

CBIC vide Circular No. 122/41/2019 directs that the DIN would be used for search authorisation, summons, arrest memo, inspection notices and letters issued bin the course of any enquiry. Subsequently, the DIN would be extended to other communications.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-122.pdf

2. Seeks to clarify restrictions in availment of input tax credit in terms of sub-rule (4) of rule 36 of CGST Rules, 2017.

CBIC vide Circular No. 123/42/2019– GST provides restriction in availment of input tax credit (ITC) in respect of invoices or debit notes, the details of which have not been uploaded by the suppliers under sub-section (1) of section 37 of the CGST Act

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-123_New.pdf

3. Seeks to clarify optional filing of annual return under notification No. 47/2019-Central Tax dated 9th October, 2019.

CBIC vide Circular No. 124/43/2019 – GST providing for optional filing of GST Annual Return for those registered persons whose aggregate turnover in a financial year does not exceed two crore rupees and who have not furnished the annual return

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-124.pdf

4. Seeks to clarify the fully electronic refund process through FORM GST RFD-01 and single disbursement

CBIC vide Circular No. 125/44/2019 specifies that the refund application in FORM GST RFD01A, along with all supporting documents, shall be submitted electronicall

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-125.pdf

5. Clarification on scope of the notification entry at item (id), related to job work, under heading 9988 of Notification No. 11/2017-Central Tax (Rate) dated 28-06-2017-reg

CBIC vide Circular No. 126/45/2019-GST prescribes 12% GST rate for all services by way of job work which makes the entry at item (iv) which covers “manufacturing services on physical inputs owned by others” with GST rate of 18%, redundant.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-126.pdf

Indirect Tax Orders

Removal of Orders:

1. Seeks to extend the last date for furnishing of annual return/reconciliation statement in FORM GSTR-9/FORM GSTR-9C for FY 2017-18 till 31st December, 2019 and for FY 2018-19 till 31st March, 2020

CBIC vide Order No. 08/2019-Central Tax hereby declares that the annual return for the period from the 1st July, 2017 to the 31st March, 2018 shall be furnished on or before the 31st December, 2019 and the annual return for the period from the 1st April, 2018 to the 31st March, 2019 shall be furnished on or before the 31st March, 2020.

http://www.cbic.gov.in/resources//htdocs-cbec/gst/rod-08-2019-cgst-english.pdf

Corporate Legal & Regulatory Notifications

S. No	Notifications

1. Identification and flagging of Disqualified Directors under Companies Act, 2013

(MCA update dated October 31, 2019)

The Ministry of Corporate Affairs (MCA) updated the process of identification and flagging of directors disqualified under section 164(2)(a) of Companies Act, 2013 for their default of non-filing of financial statement or annual return for continuous period of three financial year i.e. 2015-16, 2016-17 and 2017- 18.

As per the said update, the defaulting directors are hereby cautioned to file the pending statutory returns and do necessary compliance as per provisions of law, otherwise action will be initiated under Section 164 of the Companies Act, 2013 and rules made thereunder and the Director Identification Number (DIN) of such directors will not be allowed to be used for filing any e-forms on MCA portal.

http://www.mca.gov.in/Ministry/pdf/Upload_31102019.pdf

2. Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019

(MCA notification dated November 18, 2019)

The Ministry of Corporate Affairs (MCA) vide its notification dated November 18, 2019 has issued the Companies (Meetings of Board and its Powers) Second Amendment Rules, 2019 to further amend the Companies (Meetings of Board and its Powers) Rules, 2014. The amendment shall come into force with effect from November 18, 2019.

The said amendments are made in Rule 15(3)(a)(i)-(iv) of the Companies (Meetings of Board and its Powers) Rules, 2014 related to “Contract or arrangement with a related party” under which a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into as contracts or arrangements with criteria as mentioned below:-

i. sale, purchase or supply of any goods or materials, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company as mentioned in section 188 (1)(a) and (e);

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ii. selling or otherwise disposing of or buying property of any kind, directly or through appointment of agent, amounting to ten percent or more of net worth of the company, as mentioned in Section 188 (1)(b) and (e);

iii. leasing of property of any kind amounting to ten per cent or more of the turnover of the company, as mentioned in Section 188(1)(c);

iv. availing or rendering of any services, directly or through appointment of agent, amounting to ten percent or more of the turnover of the company, as mentioned in Section 188(1)(d) and (e).

http://mca.gov.in/Ministry/pdf/Comp2Amndt_18112019.pdf

3. Extension of last date of filing of Form NFRA-2 under Companies Act, 2013

(MCA circular dated November 27, 2019)

The Ministry of Corporate Affairs (MCA) vide its circular dated November 27, 2019 has extended the last date for filing of Form NFRA-2.

As per Rule 5 of National Financial Reporting Authority Rules, 2018, every auditor of such companies or class of companies which are covered under Rule 3 of National Financial Reporting Authority Rules, 2018, shall file an annual return with National Financial Reporting Authority in Form NFRA-2.

The due date for filing of said form was November 30, 2019, however, due to non-deployment of the form MCA has extended the date and now the said form is required to be filed within 90 days of deployment of the form. The form would be available on the website of National Financial Reporting Authority (NFRA).

http://mca.gov.in/Ministry/pdf/NFRA_27112019.pdf

4. Extension of last date of filing of Form PAS-6 under Companies Act, 2013

(MCA circular dated November 28, 2019)

The Ministry of Corporate Affairs (MCA) vide its circular dated November 28, 2019 extended the time limit for filing of form PAS-6 without additional fees for the half year ended on September 2019 up to 60 days from the date of deployment of form on the MCA website.

As per rule 9A(8) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, every unlisted listed company is required to file Form PAS-6 half yearly, within 60 days of the end of each half year.

http://www.mca.gov.in/Ministry/pdf/FormPAS6_28112019.pdf

5. RBI review the limits of eligibility criteria for classification under 'Qualifying Assets' for Non-Banking Financial Companies-Micro Finance Institutions

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(RBI circular dated November 08, 2019)

The Reserve bank of India (RBI) vide circular dated November 08, 2019 has amended limits eligibility criteria for classification under 'Qualifying Assets' for Non-Banking Financial Companies-Micro Finance Institutions (NBFC-MFIs) which shall come into force with effect from November 08, 2019.

Through the said amendment, after considering the important role played by MFIs in delivering credit to those in the bottom of the economic pyramid and to enable them play their assigned role in a growing economy, it is proposed to revise the limits eligibility criteria for classification under "Qualifying Assets" as under:

1. Increase the household income limits for borrowers of NBFC-MFIs from the current level of Rs. 1,00,000 for rural areas and Rs. 1,60,000 for urban/semi-urban areas to Rs. 1,25,000 and Rs. 2,00,000 respectively.

2. The limit on total indebtedness of the borrower has been increased from Rs. 1,00,000 to Rs. 1,25,000

3. The limits on disbursal of loans have been raised from Rs. 60,000 for the first cycle and Rs. 1,00,000 for the subsequent cycles to Rs. 75,000 and Rs. 1,25,000 respectively.

https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11727&Mode=0

6. Issuance of SEBI (Portfolio Managers) Regulations, 2019

(SEBI press release dated November 20, 2019)

Securities and Exchange Board of India (SEBI) vide its press release dated November 20, 2019 vide Press release No. 24/ 2019 has approved the issuance of SEBI (Portfolio Managers) Regulations 2019 to further amend the SEBI (Portfolio Managers) Regulations 1993 which shall come into force with effect from January 01, 2020.

The key amendments in the aforesaid press release are as below:

1. Increase in Net-worth requirement of Portfolio Managers from Rs. 2 Crores to Rs. 5 Crores and the time limit is given to the existing portfolio managers to meet the enhanced requirement within 36 months.

2. Increase in minimum investment by clients of Portfolio Managers from Rs. 25 lakhs to Rs. 50 lakhs and the Existing investments of clients may continue as such till end date of the Portfolio Management Service Agreement or as specified by the Board.

https://www.sebi.gov.in/media/press-releases/nov-2019/sebi-board-meeting_45022.html

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7. Securities and Exchange Board of India tightens disclosure norms on loan defaults

(SEBI circular dated November 21, 2019)

Securities and Exchange Board of India (SEBI) vide its circular dated November 21, 2019 has mandated specific disclosures to be made to the stock exchanges, where the listed entity has defaulted in payment of interest/ repayment of principal amount of loans including revolving facilities and unlisted debt securities and it shall come into force with effect from January 01, 2020.

As per the said amendment, all the listed entities whose specified securities or Non-Convertible Debentures (NCDs) or Non-Convertible Redeemable Preference Shares (NCRPS) are listed on the stock exchange shall make disclosure of any default on loans, including revolving facilities which continues for 30 days, within 24 hours from the 30th day of such default to the stock exchange and in case of any default in unlisted debt securities, the disclosure shall be made promptly within 24 hours from the occurrence of the default.

Further, the aforesaid listed entities are also required to make disclosure of any default on loans including revolving facilities where the default continues beyond 30 days or there is any default on debt security at the end of the quarter, within 7 days from the end of each quarter to the stock exchange.

https://www.sebi.gov.in/legal/circulars/nov-2019/disclosures-by-listed-entities-of-defaults-on-payment-of-interest-repayment-of-principal-amount-on-loans-from-banks-financial-institutions-and-unlisted-debt-securities_45036.html

8. Framework for issuance of Depository Receipts

(SEBI circular dated November 28, 2019)

Securities and Exchange Board of India (SEBI) vide its circular no. SEBI/HO/MRD2/DCAP/CIR/P/2019/146 dated November 28, 2019 has given the Framework for issuance of Depository Receipts (DR) which shall come into force with effect from November 28, 2019.

The key amendments of the aforesaid circular are as follows:

1. A Listed company shall be permitted to issue permissible securities or transfer permissible securities of existing holders, for the purpose of issue of DRs, only in permissible jurisdictions and said DRs shall be listed on any of the specified International Exchange(s) of the permissible jurisdiction.

2. 'Permissible Jurisdiction' shall mean jurisdictions as may be notified by the Central Government from time to time, pursuant to notification no. G.S.R. 669(E) dated September 18, 2019 in respect of sub-rule 1 of rule 9 of Prevention of Money-Laundering (Maintenance of Records) Rules, 2005 and 'International Exchanges' shall mean exchanges as may be notified by SEBI from time to time.'

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3. In this regard, the Central Government has notified the list of Permissible Jurisdictions as follows:

a. United States of America - NASDAQ, NYSE

b. Japan - Tokyo Stock Exchange

c. South Korea - Korea Exchange Inc.

d. United Kingdom excluding British Overseas Territories- London Stock Exchange

e. France - Euronext Paris

f. Germany - Frankfurt Stock Exchange

g. Canada - Toronto Stock Exchange

h. International Financial Services Centre in India - India International Exchange, NSE International Exchange

https://www.sebi.gov.in/legal/circulars/nov-2019/framework-for-issue-of-depository receipts_45110.html

9. NOTIFICATION No. G.S.R. 852(E)- Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of

Financial Service Providers and Application to Adjudicating Authority) Rules, 2019

The Insolvency and Bankruptcy Board of India vide its Notification on November 15, 2019 has notified rules for insolvency and liquidation proceedings to govern of Financial Service Providers ("FSP"). The Rules became effective from the date of notification.

The key highlights of the rules are as follows:

1. The Rules shall apply to only those FSPs who are notified by the Central Government under Section 227 from time to time.
2. The Rules have introduced and defined the terms Administrator and appropriate regulator.
3. It is stipulated that the provisions of the Insolvency and Bankruptcy Code, 2016 shall apply mutatis mutandis to FSPs, subject to the following modifications:

i. Corporate Insolvency Resolution Process ("CIRP")-

- Initiation of process
- Interim Moratorium
- Appointment of Advisory Committee
- No objection required from Resolution Plan by appropriate regulator

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ii. Liquidation Process

- The rules provide for non-suspension and non-cancellation of business license or registration of the FSP unless an opportunity of being heard has been provided to the liquidator;
- It is stipulated that Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before order of liquidation or dissolution of FSP.

iii. Voluntary Liquidation Process

- The rules provide for permission of appropriate regulator before initiation of voluntary liquidation process.
- It is stipulated that Adjudicating Authority shall provide the appropriate regulator an opportunity to be heard before passing an order for dissolution of FSP.

4. The Rules clarify that moratorium will not apply to any third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties. However, the FSP Rules also provides that an Administrator shall take control and custody of third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties only for the purpose of dealing with them in the manner, as may be notified by the Central Government under Section 227.

https://ibbi.gov.in//uploads/legalframwork/cb1d53c7fe47f8f22ab36a40f441db2c.pdf

10. NOTIFICATION No. G.S.R. 854(E)- the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019

The Insolvency and Bankruptcy Board of India vide its Notification on November 15, 2019 has notified rules for Application to Adjudicating Authority for Insolvency Resolution Process(CIRP) for Personal Guarantors to Corporate Debtors. The Rules became effective from December 1, 2019.

The key highlights of the rules are as follows:

1. The Rules define the term “guarantor” to include a debtor who is a personal guarantor to a corporate debtor and such guarantee has been invoked by the creditor and remains unpaid in full or in part.

2. An application for initiation for CIRP against a guarantor may be initiated by the guarantor itself in accordance with Section 94 (1) in FORM-A

3. A creditor may present a demand notice under to the guarantor under Form -B in accordance with Section 95 (4) (b). An application for initiation for CIRP against a guarantor may be initiated by a creditor in Form-C along.

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4. The appointment of a resolution professional shall be done in accordance with Section 97 and 98, based on the information provided by the Insolvency and Bankruptcy Board of India.

5. The Adjudicating Authority may permit withdrawal of an application, either before its admission, on a request made by the applicant; or after its admission, on the request made by the applicant, if ninety per cent of the creditors agree to such withdrawal.

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11. NOTIFICATION No. G.S.R. 855(E)- the Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019.

The Insolvency and Bankruptcy Board of India vide its Notification on November 15, 2019 has notified rules for application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors. The Rules became effective from December 01, 2019.

The key highlights of the rules are as follows:

1. The Rules define the term "guarantor" to include a debtor who is a personal guarantor to a corporate debtor and such guarantee has been invoked by the creditor and remains unpaid in full or in part.

2. An application under Section 122 (1) for initiation for Bankruptcy Process against a guarantor may be initiated by the guarantor itself in Form-A.

3. An application under Section 123 (1) for initiation for Bankruptcy Process against a guarantor may be initiated by a Creditor in Form-B.

4. The appointment or replacement of a Bankruptcy Trustee shall be done based on the information provided by the Insolvency and Bankruptcy Board of India.

5. Formats for Public Notice, Notice to creditors, Statement of financial position, claim and Notice of Dividend have been prescribed in the Rules.

6. There shall be a restriction on bankrupt as per under clause (d) of sub-section (1) of Section 141 shall be applicable for any financial or commercial transaction of one lakh rupees and above.

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12. NOTIFICATION No. IBBI/2019-20/GN/REG051. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (BANKRUPTCY PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019

The Insolvency and Bankruptcy Board of India vide its Notification on November 20, 2019 has

notified regulations for Bankruptcy Process for Personal Guarantors to Corporate Debtors. The Rules became effective from December 01, 2019.

The key highlights of the regulations are as follows:

1. The regulations stipulate the eligibility of a Bankruptcy trustee.

2. The powers and duties of a Bankruptcy Trustee to Personal Guarantor have been enumerated.

3. The method of formation of Committee of Creditors, conducting of meetings of creditors and voting has been stipulated.

4. The method of realisation of assets and related compliances have been listed.

5. The provisions related to proceeds derived from Bankruptcy process and distribution of assets have also been stipulated.

6. It is provided that a claim may be submitted by a creditor which is not due and payable on the bankruptcy commencement date, to the bankruptcy trustee.

7. It is provided that subject to the provisions of sections 174 and 178, the bankruptcy trustee shall not commence distribution of dividend unless a preliminary report is filed with the Adjudicating Authority.

8. The Bankrupt is required to notify the Bankruptcy Trustee in case the increase in income or acquisition or devolution of property of the Bankrupt. After the notice, he shall not part with any increase in his income or dispose of any property acquired, without the prior permission of the Adjudicating Authority. In the event, a bankrupt disposes of property before giving the notice, he shall within seven days from such disposal, disclose to the bankruptcy trustee the relevant details of the transaction which may be necessary to enable the bankruptcy trustee to trace the property and recover it for the purpose of bankruptcy estate.

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13. NOTIFICATION No. IBBI/2019-20/GN/REG050. INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR PERSONAL GUARANTORS TO CORPORATE DEBTORS) REGULATIONS, 2019

The Insolvency and Bankruptcy Board of India vide its Notification on November 20, 2019 has notified regulations for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors. The Rules became effective from December 01, 2019.

Legal & Regulatory

The key highlights of the regulations are as follows:

1. The regulations stipulate the eligibility of a Resolution Professional for acting as Resolution Professional for Personal Guarantors.

2. It is stipulated that Creditor should submit its claim along with proof to the Resolution Professional before last date mentioned in the notice. Such proof may be proved by the Creditor on basis of records of an Information Utility or any other documentary proof.

3. The duties and powers of a Resolution Professional have been stipulated.

4. The method of formation of Committee of Creditors, conducting of meetings of creditors and voting have been provided.

5. The Regulations provide that Resolution Professional shall file a repayment plan approved by creditors to the Adjudicating Authority within 120 days of resolution process commencement date. The essential terms of a repayment plan have also been listed by the Regulations.

6. The Regulations also stipulate the process in case of breach of repayment plan and non-cooperation by the Guarantor.

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Column

Valuation of Shares

By – Yashish Sharma

IBA

What is Valuation of Shares?

Valuation of shares is the process of knowing the value of company's shares. Share valuation is done based on quantitative techniques and share value will vary depending on the market demand and supply. The share price of the listed companies which are traded publicly can be known easily. But w.r.t private companies whose shares are not publicly traded, valuation of shares is challenging.

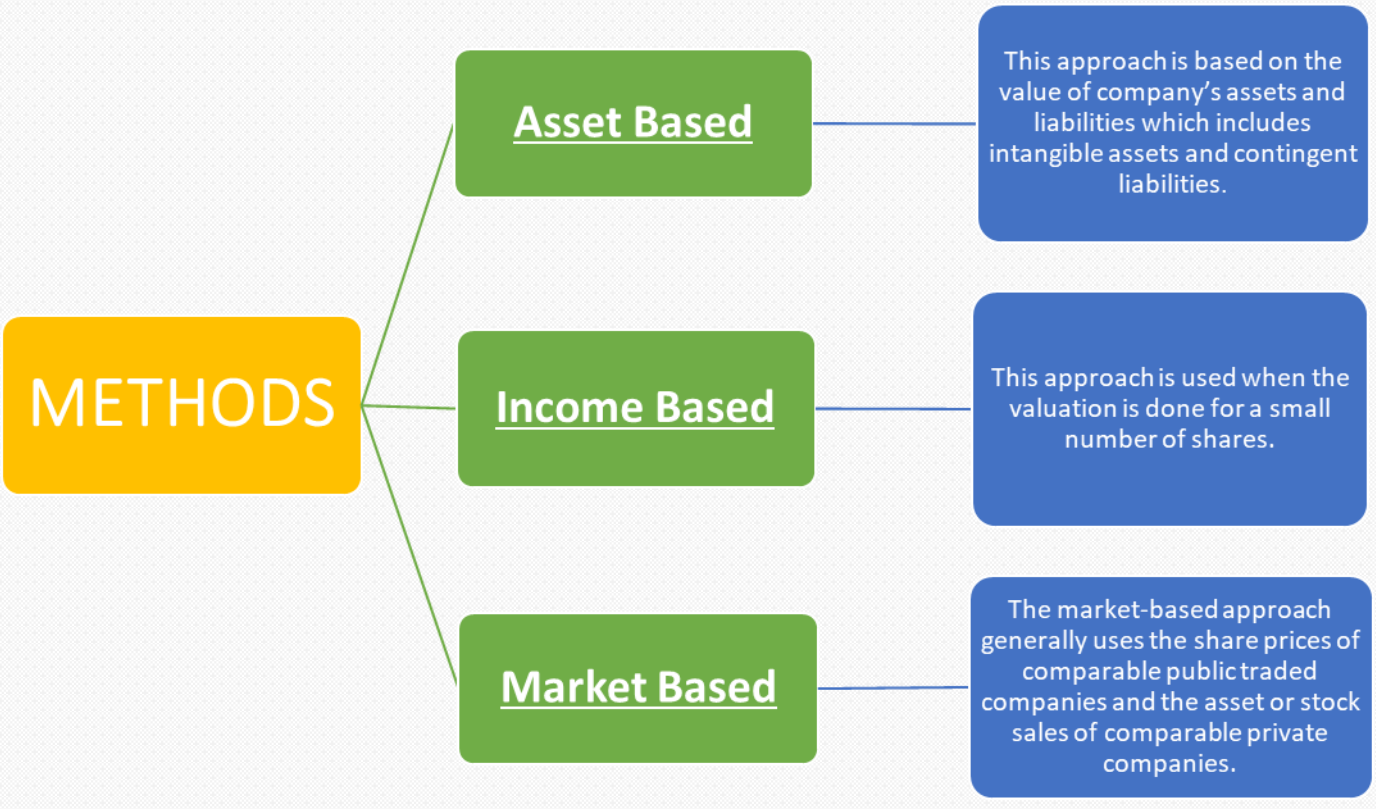
Need or Purpose?

Shares of private companies in any case will not be quoted on the stock exchange. If shares have to be exchanged of a private company then the value of such shares will have to be ascertained. When a loan advanced on the security of shares, it becomes necessary to know the value of shares on the basis of which loan has been advanced. When the shares are given in a company as gift it may be necessary for the purpose of assessing gift tax, to place a value on the shares. Valuation of shares is imperative in cases of merger, acquisition, reconstruction, amalgamation, etc. When the shares of a company have to converted or company is implementing an Employee Stock Option Plan (ESOP), such shares have to be valued.

Valuation of Ordinary Shares :

The act of deciding the most fitting strategy will rely upon the quantity of shares changing hands, and the aim of the business. When an organisation is unlisted, there is no distributed market price for shares. The value of the normal shares should, therefore, be calculated with other accessible data using formulae, appraisals and discernment. Accordingly, the qualities calculated may be subjective and, practically speaking, are subject to transaction before a final price is agreed.

What are Methods of Share Valuation?



How to Choose the Best Stock Valuation Method

Each business has different types of qualities, strengths and rules of valuation. Therefore, it is better to choose the method on the basis of the information about the company that is readily available to you for the purpose of valuation. For example, The asset approach can be relevant to manufacturers, distributors, etc.. Why?

This is because these businesses often use a huge volume of capital assets, the value of which can easily influence the intrinsic value of the shares.

Tax Implications

Tax valuations are usually triggered in fund-raising and when shares are bought/sold below the FMV. In the majority of transactions for going concerns and profitable businesses, this does not apply as consideration is usually well above FMV. However in many businesses it may either be below FMV or close enough to FMV to trigger taxation. FMV also changes depending on the balance sheet date and may therefore cause a shock post-transaction if significant movements have occurred.

All in all, it is best to conduct tax valuations while contemplating the transaction or immediately post-transaction, to understand what the tax implications are.

Conclusion

Whether you are a trader or a long-term investor, the practice of share valuation is vital to your knowledge and success. Thus, traders can use various methods of share valuation to compare stocks of different companies. Long-term investors can evaluate their future prospects via the various methods and approaches of it. Therefore, it is essential to update yourself with the best methods of share valuation as per your requirements and goals.

IBA NEWS

POSH Training @ Client

Nidhi delivered an interactive and informative session on Prevention Of Sexual Harassment (POSH) to one of our reputed clients at Bengaluru.

Organized an awareness campaign with the focus on being healthy with natural remedies/therapies.

Courtesy : Mr.Harish Anchan, Naturopathy Expert

Upcoming Compliances

Date	Compliance
December 11, 2019	Due date for furnishing of Form GSTR-1 for the taxpayers having aggregate turnover of more than 1.5 crore for the month of November 2019
December 13, 2019	Due date for furnishing of Form GSTR-6 for Input Service Distributor for the month of November 2019
December 15, 2019	Third instalment of advance tax for the assessment year 2020-21
December 20, 2019	Due date for filing consolidated return in the Form GSTR-3B for the month of November 2019
December 31, 2019	Due date for furnishing of GST Annual return and GST Audit Report for the Financial Year 2017-18

Editorial Team




About us:

IBA is a leading Financial and legal advisory company with specialization in Assurance, Risk Consulting, Legal, Direct Tax, Indirect Tax(GST) and Corporate Advisory for midsize, SMEs and start-up firms. IBA constitute a young team of path breaking professionals, who believe in creating value through innovation and creativity to provide ultimate client satisfaction. Clients benefit from our fresh thinking, constructive challenge and practical understanding of the issues they face. We aim to alloy a perfect blend of professionalism with high standards of service, in our pursuit of excellence.

Founded in the Year 2003, the company witnessed immense growth from 2 members to currently a 100 members team, with its offices in Delhi, Mumbai and Bengaluru and its clients from across states. IBA continues to offer wholesome service experience to boost highly valued client relationships by combining the technical and industry expertise at par with well-placed firms together with a personal commitment to optimize client service.

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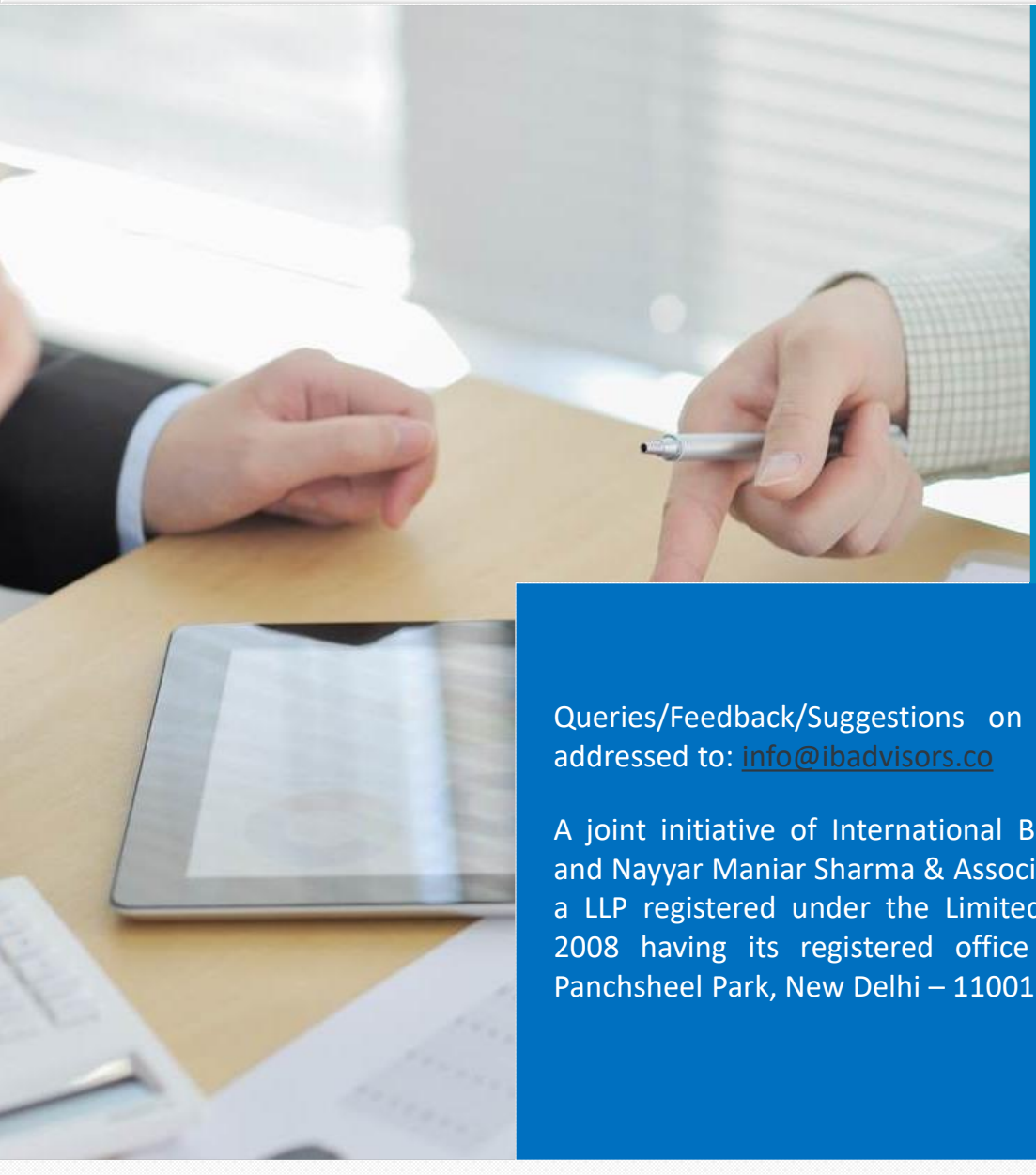

Queries/Feedback/Suggestions on this newsletter may be addressed to: info@ibadvisors.co

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